

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DARIUS KINNEY,

CASE NO. 1:20 CV 573

Petitioner,

v.

JUDGE JAMES R. KNEPP II

WARDEN DAVID W. GRAY,

**MEMORANDUM OPINION AND
ORDER**

Respondent.

This matter is before the Court on Magistrate Judge James E. Grimes Jr.'s Report and Recommendation ("R&R") to deny Petitioner Darius Kinney's Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254. (Doc. 11). Judge Grimes recommends the Court find Grounds One and Two meritless; he further recommends the Court find Ground Two procedurally defaulted. *See id.* at 12-27.

Under the relevant statute:

Within fourteen days of being served with a copy [of a Magistrate Judge's R&R], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1); *see also* FED. R. CIV. P. 72(b)(2). The failure to file timely written objections to a Magistrate Judge's R&R constitutes a waiver of *de novo* review by the district court of any issues covered in the R&R. *Thomas v. Arn*, 728 F.2d 813, 814-15 (6th Cir. 1984); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).

In this case, the R&R was issued on October 20, 2022, and it is now November 21, 2022. Petitioner has neither filed objections nor requested an extension of time to file them. Despite the

lack of objections, the Court has reviewed Judge Grimes's R&R and agrees with the findings and recommended rulings therein. Therefore, the Court ADOPTS Judge Grimes's R&R (Doc. 11) as the Order of this Court, and DENIES Petitioner's Petition (Doc. 1) as set forth therein.

The Court finds an appeal from this decision could not be taken in good faith. 28 U.S.C. § 1915(a)(3). Further, because Petitioner has not made a substantial showing of a denial of a constitutional right directly related to his conviction or custody, the Court declines to issue a certificate of appealability. 28 U.S.C. § 2253(c)(2); FED. R. APP. P. 22(b); Rule 11 of Rules Governing § 2254 Cases.

IT IS SO ORDERED.

s/ James R. Knepp II
UNITED STATES DISTRICT JUDGE